

No. 9344

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United States  
Circuit Court of Appeals

*For the Ninth Circuit. 8*

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MIGUEL ZAMORA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

—

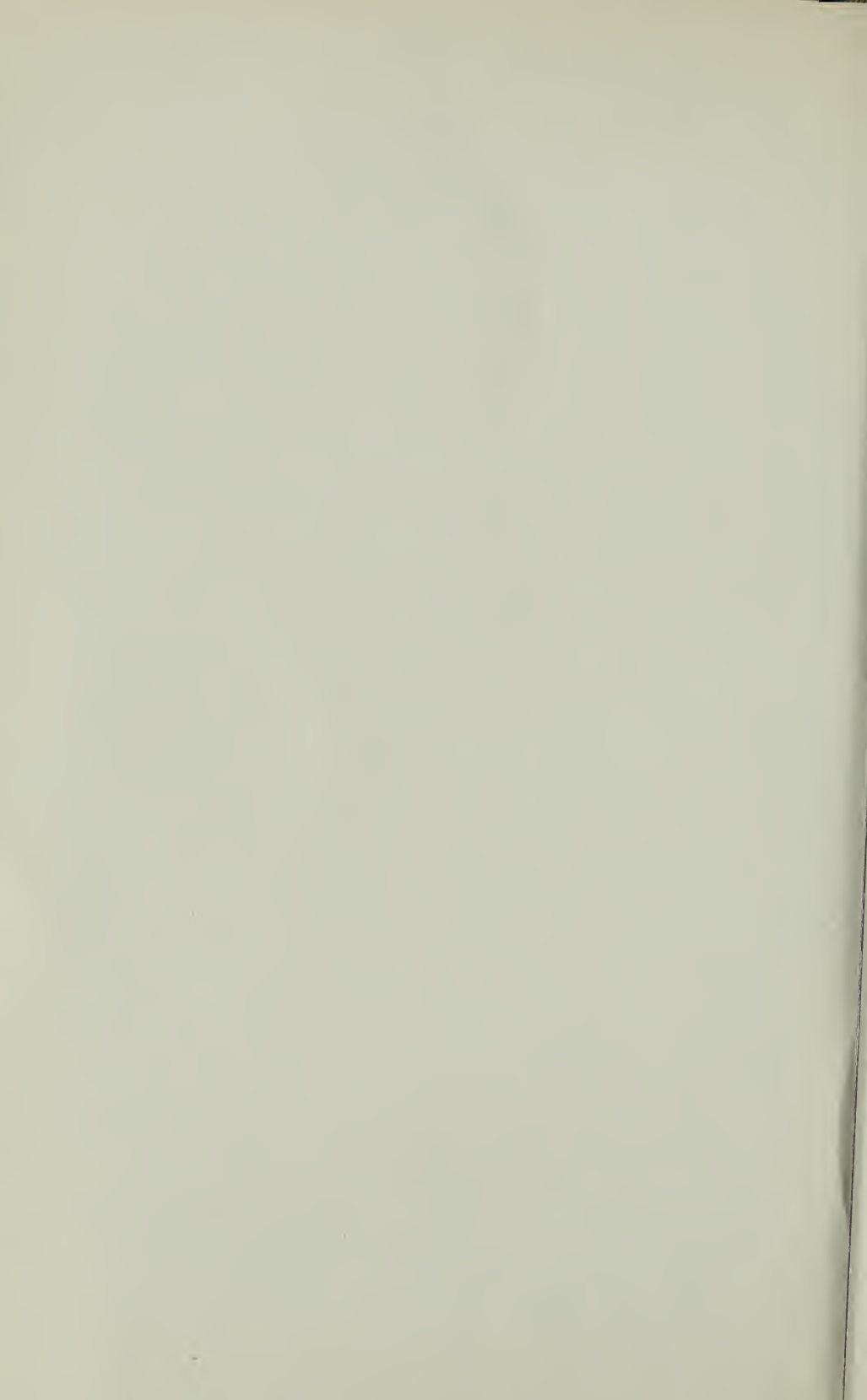
Transcript of Record

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Upon Appeal from the District Court for the  
Territory of Alaska, First Division

FILED

DEC - 5 1939



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

MILDRED R. HERMANN,

of Juneau, Alaska

FRANK H. FOSTER,

of Juneau, Alaska

Attorneys for Appellant.

WILLIAM A. HOLZHEIMER, U. S. Attorney,

of Juneau, Alaska

GEORGE W. FOLTA, Asst. U. S. Attorney,

of Juneau, Alaska

Attorneys for Appellee.

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In the District Court for the Territory of Alaska

Division Number One at Juneau

No. 2254-B

THE UNITED STATES

vs.

MIGUEL ZAMORA,

INDICTMENT

Arson

Vio. Sec. 4789 CLA 1933

United States of America,

First Division District of Alaska—ss.

In the District Court for the District of Alaska  
and for the First Division District aforesaid, at the  
Regular May Term thereof, A. D. 1938.

The Grand Jurors of the United States, impaneled, sworn, and charged at the Term, aforesaid, of the Court aforesaid, on their oath present, that Miguel Zamora, at Petersburg, Alaska, on or about the 8th day of April, in the year of our Lord nineteen hundred thirty-eight, in the said district and within the jurisdiction of said Court, did wilfully, feloniously and maliciously burn a dwelling house of another, to-wit, of John Silva, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

WM. A. HOLZHEIMER,  
United States Attorney.

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Witnesses examined before the grand jury:

John Silva  
Helen Zamora  
Mabel Jackson  
Wm. Granier  
Clifford Fenn  
Beulah Rafol  
Pete Vilarde  
Alice Bassford  
Chris Christensen.

Presented by H. I. Lucas, Foreman of the Grand Jury, in the presence of the Grand Jury, in open Court and filed in open Court with the Clerk of the

District Court, all on this 19th day of November, 1938.

ROBERT E. COUGHLIN,  
Clerk of the District Court Dist. of Alaska, Division No. 1.

By J. W. LEIVERS,

Dep.

A true bill.

H. I. LUCAS,

Foreman. [1\*]

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[Title of District Court and Cause.]

MOTION FOR CONTINUANCE.

Comes now the defendant in the above entitled cause and moves the court for an order continuing the trial of the case for one week. This motion is supported by the affidavit of the attorney for the defense.

MILDRED R. HERMANN,  
Attorney for Defendant.

[Endorsed]: Filed Dec. 14, 1938. [2]

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[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION  
FOR CONTINUANCE

Mildred R. Hermann, of Juneau, Alaska, being first duly sworn and on oath deposes and says: That

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

she is the attorney of Miguel Zamora, the within named defendant; that Mrs. Beulah Rafol, of Petersburg, who was a witness at the preliminary hearing in Petersburg, on behalf of the government, was later subpoenaed to testify before the grand jury concerning facts material to this case; that after her testimony was given before the grand jury she was retained as a witness for the government for approximately one month, or until Monday, December 12, 1938; that on the said date, December 12th, 1938, she was dismissed by the District Attorney, as a witness in this case, and told to return to Petersburg on the Alaska, leaving that night; that after her dismissal by the district attorney, and without solicitation of this affiant, who was unaware of her identity and the nature of her testimony, she appeared voluntarily at affiant's office, stated that she had been dismissed by the District Attorney as a witness in this case; because "her testimony was apparently in favor of the defendant, instead of against him", and offered to remain in Juneau to testify in behalf of defendant; that this affiant questioned her in regard to the nature of her testimony and found it to be material to defendant's defense; that subsequently, the said Beulah Rafol, in violation of her promise to remain and testify in behalf of the defendant, did embark on the Alaska, and return to her home in Petersburg; that affiant did not learn of this fact until she saw the passenger list of the Alaska at seven

o'clock last night, December 13, 1938, and later checked to ascertain whether or not the said Beulah Rafol had left. That affiant has reason to believe and does believe that the said witness was induced to leave Juneau in order that her testimony might not be available for defendant; [3] that her testimony is important to defendant's case, and he will be prejudiced if compelled to go to trial without it.

Dated at Juneau, Alaska, December 15, 1938.

MILDRED R. HERMANN,  
Attorney for Defendant.

Subscribed and sworn to before me this 14th day of December, 1938.

[Seal] ROBERT E. COUGHLIN.

[Endorsed]: Filed Dec. 14, 1938. [4]

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[Title of District Court and Cause.]

VERDICT.

We, the jury duly impanelled and sworn to try the above entitled cause, find the defendant Miguel Zamora, guilty, as charged in the indictment.

Dated at Juneau, Alaska, December 16, 1938.

A. M. MILL,

Foreman.

[Endorsed]: Filed Dec. 17, 1938. [5]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the defendant in the above entitled cause and moves the court for an order directing a new trial of the case; This motion is based on the following grounds:

I.

Insufficiency of the evidence to justify the verdict, in that

1. No corpus delicti was proved as no evidence was introduced to show the criminal origin of the fire; and

2. No evidence was offered to rebut the presumption that the fire was accidental or providential, except the bare fact that there had been no fire in the stove, or either of them, for approximately three hours; and

3. No evidence was offered in any way connecting the defendant with the purchase or possession of the gasoline, concerning which witnesses testified; and

4. No responsible adult witness testified to seeing the defendant in the neighborhood at the time of the fire;

II.

Errors in law occurring at the trial excepted to by the defendant, in that

1. The Court denied defendant's offer to prove that the chimney was defective and that a fire haz-



ard existed as a result of this defectiveness that could have caused the fire; and

2. The court denied the defendant the right to introduce testimony from an expert witness concerning fire hazards in general and particularly in regard to the fire hazard caused by a defective chimney; [6]

3. The court denied defendant the right to impeach Mabel Jackson, an eleven year old native girl, who was the only witness to connect the defendant with the fire, by showing that said Mabel Jackson had made a false statement, in her sworn testimony at this trial.

4. The Court denied the defendant's motion for a continuance until Beulah Rafol, a material witness for the defense, could be produced; and

5. The Court denied the offer of the defendant to show that Beulah Rafol's testimony was material, through the record of her testimony taken before the grand jury by the District Attorney; and

6. The Court denied the motion of defendant for an instructed verdict of "Not Guilty", because the evidence before the jury was not sufficient to sustain a verdict of guilty; and

7. The Court denied the motion of defendant's attorney to set aside the verdict of the jury because it was not supported by the evidence; and

8. Other errors in law occurring at the trial and excepted to by the defendant.

MILDRED R. HERMANN,

Attorney for Defendant.

Copy received and service accepted this 22nd day of December, 1938.

GEO. W. FOLTA,

Attorney for Plaintiff.

[Endorsed]: Filed Dec. 22, 1938. [7]

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[Title of District Court and Cause.]

MOTION TO RE-OPEN HEARING ON  
MOTION FOR NEW TRIAL.

Comes now the defendant in the above entitled cause and moves the Court for an order setting aside the ruling of this Honorable Court, heretofore made on the 7th day of January, 1939, in the above entitled cause, in which ruling defendant's motion for a new trial was denied, which said order should further provide for a re-hearing upon said motion for a new trial, until the next regular term of the District Court to be held in Juneau, Alaska, at which time, such hearing may be had as though no Order denying defendant's motion for a new trial had ever been heard; and such Order should further provide that defendant be permitted to amend his original motion for a new trial by adding thereto as additional grounds for such new trial "Newly discovered evidence material to defendant, which he could not with reasonable diligence have discovered and produced at the trial." This motion is based upon the affidavits of Herman Peterson

and Willie Johnson of Petersburg, Alaska, and Mildred R. Hermann of Juneau, Alaska, hereunto attached.

MILDRED R. HERMANN,  
Attorney for Defendant.

Copy Received and Service accepted this 20th day of March, 1939.

WM. A. HOLZHEIMER,  
U. S. Atty.

[Endorsed]: Filed March 20, 1939. [8]

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[Title of District Court and Cause.]

AFFIDAVIT

United States of America,  
Territory of Alaska—ss.

I, Willie Johnson of Petersburg, Alaska, being first duly sworn, solemnly Declare and State:

1. That affiant is the proprietor of the card and pool room, also of some candy and ice-cream parlor, known at Petersburg, Alaska, as the Charlie Mann's Pool Room, Petersburg, Alaska, do testify that on the night of April 7th, 1938, Mike Zamora (Defendant), came in his place of business approximately 9:00 o'clock in the evening and talked with his wife, Mrs. Willie Johnson, in the ice-cream parlor for about an hour.

2. Mike Zamora, after talking with Mrs. Johnson, entered the card room and played cards with

Mr. Herman Pederson and the affiant, Willie Johnson.

3. That affiant do verily testify that Mike Zamora, Mr. Herman Pederson and affiant, played cards from about 10:00 o'clock in the evening of April 7th, 1938, till after one o'clock in the morning of April 8th, 1938; and Mike Zamora did not leave his place of business until they were thru playing cards, or closing time of his business place; which he does verily believes that the time was about 1:15 A. M.

4. That affiant did not offer to testify at the trial of said Zamora (Defendant) in Petersburg, Alaska, because he was not called by the (Defendant) to testify for his own behalf; and affiant confidently expected the case to be thrown out of court; that affiant makes this affidavit freely in his own volition as a means of righting the serious wrong that have resulted in a twenty year sentence for a man whom he firmly believes to be innocent of the crime he did not commit and for which Miguel (Mike) Zamora, the (Defendant), is charged. [9]

In Truth Whereof, I have set my hands and hereunto affixed my signature at Petersburg, Alaska, on this ..... day of March 19.....

WILLIE JOHNSON,

Affiant.

Subscribed and sworn to before me this 9th day of March, 1939, at Petersburg, Alaska.

[Seal] HAROLD F. DAWES,  
United States Commissioner of Petersburg, Alaska,  
U. S. Commissioner & ex-officio Notary Public,  
Petersburg Precinct, Alaska.

[Endorsed]: Filed Mar. 20, 1939. [10]

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[Title of District Court and Cause.]

AFFIDAVIT

United States of America,  
Territory of Alaska—ss.

I, Herman Peterson, resident of Petersburg, Alaska, being first duly sworn, solemnly Declare and State:

1. That on the night of April 7th, 1938, affiant was playing cards with Miguel (Mike) Zamora (Defendant), and Mr. Willie Johnson, in Mr. Willie Johnson's Pool Room, known at Petersburg, Alaska, as the Charlie Mann's Pool Room: Petersburg, Alaska.

2. That Mike Zamora, Mr. Willie Johnson, and affiant, played cards from about 10:00 o'clock in the evening of April 7th, 1938, till approximately after one o'clock in the morning of April 8th, 1938.

3. Being that it was closing time for the business place of Mr. Willie Johnson (Charlie Mann's Place), to close its doors, affiant saw Zamora left

the pool room on foot headed for home. At the same time, affiant jumped on his tax-cab and drove towards the direction where Mr. John Silva's former residence was, and for which has a distance of about a quarter of a mile from Mr. Willie Johnson's Pool Room to Mr. John Silva's residence.

4. Upon reaching the street where Mr. John Silva's residence was, affiant noticed that Mr. John Silva's house is on fire and affiant immediately turned his car around hurriedly to turn in the fire alarm which affiant did turn the fire alarm himself.

5. To the best of his knowledge and belief, affiant is at a free will to state and declare that he is positive that Mike Zamora, could not have set the fire on Mr. John Silva's residence. In the first place, Mike Zamora, could not have beat him to reach Mr. Silva's residence being that a car is faster than an ordinary walk of a man who is travelling on foot. On the second thought, judging from the flames [11] of the burning house, the house has been burning for some length of time before Zamora and affiant had left Mr. Willie Johnson's Pool Room at a little after one o'clock in the morning, the morning when John Silva's house caught fire.

6. That affiant did not offer to testify at the trial of said Zamora (Defendant) in Petersburg, Alaska, because he was not called by the (Defendant) to testify for his own behalf; and affiant confidently expected the case to be thrown out of court; that affiant makes this affidavit freely in his own volition as a means of righting the serious wrong

that have resulted in a twenty year sentence for a man whom he firmly believes and knows to be innocent of the crime he did not commit and for which Miguel (Mike) Zamora, is charged.

In Truth Whereof, I have hereunto affixed my signature at Petersburg, Alaska, on this 8th day of March, 1939.

HERMAN PEDERSON,

(Affiant)

Subscribed and sworn to before me this 8th day of March, 1939, at Petersburg, Alaska.

[Seal] HAROLD F. DAWES,

U. S. Commissioner & Ex-officio Notary Public,  
Petersburg Precinct, Alaska.

[Endorsed]: Filed Mar. 20, 1939. [12]



[Title of District Court and Cause.]

AFFIDAVIT

United States of America,  
Territory of Alaska—ss.

Mildred R. Hermann, being first duly sworn and on oath deposes and says: that she is the attorney for the within named defendant, and has been such, since the indictment against him was returned by the grand jury; that she is a practicing attorney duly admitted to practice law in the Territory of Alaska; that since the hearing heretofore had on defendant's motion for a new trial on the ..... day of ....., 193....., certain facts have come to her

knowledge, which in the opinion of the affiant are such as to conclusively prove that defendant, Miguel Zamora, could not have been guilty of the offense of which he has been charged and convicted.

Affiant further states that in the interests of justice and in order that an innocent man may not be unjustly imprisoned, it is right and proper that the statements, made by affidavit, which have come to affiant's attention, said affidavits being hereto attached, may be examined, and the truth or falsity of the same be determined by investigation in the town of Petersburg, Alaska.

Wherefore, in the interests of justice, affiant prays in accord with the motion herewith submitted.

MILDRED R. HERMANN.

Subscribed and sworn to before me this 11th day of March, 1939.

[Seal] JAMES WICKERSHAM,  
Notary Public in and for the Territory of Alaska.

My commission expires Nov. 4, 1941.

[Endorsed]: Filed Mar. 20, 1939. [13]



In the District Court for the Territory of Alaska  
Division Number One, at Juneau

No. 2254-B

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIGUEL ZAMORA,

Defendant.

JUDGMENT AND COMMITMENT.

And now, to-wit, on this 4th day of February, 1939, this matter came before the court for imposition of sentence upon the above named defendant, Miguel Zamora, upon the verdict of the jury duly empaneled and charged in this cause, by which verdict the above named defendant, Miguel Zamora, was found guilty of the crime of arson by burning a dwelling house in violation of Section 4789, Compiled Laws of Alaska, 1933, as charged in the indictment upon which he was tried, returned in the above entitled court and cause on the 19th day of November, 1938; the defendant appearing in court in person and being represented by his attorney, Mildred R. Hermann; Geo. W. Folta, Assistant United States Attorney appearing for the Government; and the court having asked the defendant if he has any reason to state why sentence should not now be imposed upon him, to which he

offers no good or sufficient reason, and the court being fully advised in the premises,

Does hereby consider, adjudge and decree that it is the Judgment of the court that said defendant, Miguel Zamora, is guilty of the crime of arson by burning a dwelling house, as charged in the indictment heretofore returned and filed herein, and it is the sentence of the court that said defendant, Miguel Zamora, be imprisoned in the United States Penitentiary at McNeil Island, Washington, or such other institution as the Attorney General of the United States may direct for a term of Twenty (20) Years, and that he stand committed until the said sentence herein imposed is fully executed.

It Is Further Ordered, That the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the same shall serve as a commitment herein. [14]

Done in open court this 4th day of February, 1939, at Juneau, Alaska.

GEO. F. ALEXANDER,

District Judge.

A true copy. Certified this 4th day of February, 1939.

ROBERT E. COUGHLIN,

Clerk.

Entered Court Journal No. 12, pages 274-275.

[Endorsed]: Filed Feb. 9, 1939. [15]

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Name and Address of Appellant: Miguel Zamora,  
Petersburg, Alaska.

Name and address of Appellant's attorney, Mil-  
dred R. Hermann, Juneau, Alaska.

Offence: Arson.

Date of Judgment: February 9, 1939.

Brief Description of Judgment: Twenty years  
imprisonment at McNeil Island Penitentiary, or  
such other place as the Attorney General may desig-  
nate.

Name of prison at which now confined: Federal  
Jail, Juneau, Alaska.

I, Miguel Zamora, the above named appellant  
hereby appeal to the United States Circuit Court  
of Appeal 9th Circuit, from the judgment above  
entered on the grounds set forth below.

MIGUEL ZAMORA,

Appellant.

Juneau, Alaska,

February 13, 1939.

GROUND'S FOR APPEAL.

1. Errors at law occurring during the trial and  
excepted to by appellant.

2. Insufficiency of evidence to justify the ver-  
dict.

3. Improper conduct on part of presiding judge  
at trial, excepted to by appellant.

Copy received and service accepted this 14th day of February, 1939.

G. W. FOLTA,

Asst. U. S. Attorney.

[Endorsed]: Filed Feb. 14, 1939. [18]

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

This cause coming on regularly to be heard on the 14th day of February, 1939, upon the notice of appeal of defendant, duly filed herein together with defendant's assignment of errors:

It is now ordered that said appeal be and the same is hereby granted.

This order is filed nunc pro tunc for the reason that same was not entered at the time of the filing of said notice and assignment of errors.

Dated the 30th day of June, 1939.

GEO. F. ALEXANDER,

District Judge.

Service Accepted and copy received this 30th day of June, 1939.

G. W. FOLTA,

Assistant U. S. Attorney.

Entered Court Journal No. 12, page 439.

[Endorsed]: Filed July 1, 1939. [17]

[Title of District Court and Cause.]

ORDER GRANTING EXTENSION OF TIME  
FOR SETTLING BILL OF EXCEPTIONS.

Whereas on March 11, 1939, the Judge of the above entitled Court issued a minute order setting June 30, 1939, as the final day for the settlement of the Bill of Exceptions in the above entitled case, and whereas, the assistant District Attorney, George W. Folta, has requested additional time in which to study said Bill of Exceptions, and counsel for the defendant, Mildred R. Hermann, has assented thereto,

Now Therefore, it is hereby ordered that the time for settling said Bill of Exceptions, heretofore filed in the office of the Clerk of the above entitled Court, under date of June 28, 1939, be extended for an additional thirty days in order to allow time for an examination of said Bill of Exceptions by the assistant district attorney.

Done in open court this 30th day of June, 1939.

GEO. F. ALEXANDER,

District Judge.

Service of copy admitted this 30th day of June, 1939.

G. W. FOLTA.

Entered Court Journal No. 12, page 438.

[Endorsed]: Filed Jun 30, 1939. [18]

[Title of District Court and Cause.]

ORDER SETTLING AND ALLOWING BILL  
OF EXCEPTIONS.

This matter coming on to be heard before the above entitled court, on application of the defendant for the settlement and allowance of the Bill of Exceptions, the defendant appearing by his attorney, Mildred R. Hermann, and the United States appearing by George W. Folta, Assistant United States Attorney for the First Judicial Division, Territory of Alaska; I the undersigned District Judge, for the First Judicial Division, Territory of Alaska, who presided at the trial of the above entitled action, do hereby certify:

That the foregoing Bill of Exceptions contains all the material facts, matters, things, proceedings, objections rulings and exceptions thereto, occurring at the time of the trial of said cause herein, including all the evidence adduced at the trial material to the issues presented by the Assignment of Error herein.

I further certify that the foregoing Bill of Exceptions contains the substance of all orders extending time for serving, settling and filing the same.

I direct that the exhibits referred to herein, Government's Exhibit No. 1, and Defendant's Exhibit A, specifically made a part of the Bill of Exceptions, should be, and I hereby direct them to be transmitted by the Clerk of this Court for its inspection, the said exhibits consisting of a plan of

the house of the complaining witness herein, and certain photographs taken of said premises following fire.

And I further certify that the said exhibits hereto referred to and hereby made a part of this Bill of Exceptions, constitute all the exhibits offered in said evidence at the said trial, material to the issues presented by the Assignment of Error herein, and I hereby make the said exhibits part of the foregoing Bill of Exceptions. [19]

And now pursuant to the Order of the United States Circuit Court of Appeals, for the Ninth Circuit, of September 7, 1937, authorizing and directing me to do so, I hereby settle and allow the foregoing Bill of Exceptions as a full, true, and correct Bill of Exceptions in this cause, containing all the material evidence adduced at the trial, and I hereby order the same to be filed as part of the record in this cause.

And I further certify that the foregoing Bill of Exceptions was presented and is hereby allowed and settled within the time prescribed for that purpose by said Order of the Appellate Court and at the same term of court at which the said judgment in said cause was rendered and entered.

Done in open court on Monday, the 31st day of July, 1939.

GEO. F. ALEXANDER,

Judge.

Service of copy acknowledged 31st day of July, 1939.

G. W. FOLTA,

Asst. U. S. Atty.

Entered Court Journal No. 13, page 1-2.

[Endorsed]: Filed July 31, 1939. [20]

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[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

Comes now the defendant in the above entitled cause and files the following assignment of errors upon which he will rely in the prosecution of the appeal in the said case, from the judgment and proceedings had at the trial which said judgment was signed and entered on the 4th day of February, 1939.

#### I.

The court erred in the above entitled cause in the rulings made by the Court in the admission of evidence which was objected to, and in the rejection of evidence offered at said trial, as more fully set forth in the questions, answers, offers of proof, objections and exceptions thereto, and the rulings of the Court, which appear in the transcript of the proceedings in the trial of this cause and which appear in the following proceedings set forth as follows:



HELEN ZAMORA

called as a witness for the defense, being duly sworn testified as follows:

Q. Had you had a fire at the house a few days before this (referring to fire defendant is accused of setting)

Mr. Folta: I don't see where that is relevant.

The Court: I don't either. We are not trying but one fire at a time.

Mrs. Hermann: We don't want to; but I have an offer of proof to make here. If the Court doesn't want the jury to hear it I still desire to make it.

The Court: The jury will be excused until called.

(The jury retired from the court room)

The Court: You may make your offer of proof for the purposes of the record.

Mrs. Hermann: Let the record show that the defense offers to prove by this witness, and other witnesses, that the chimney at the Silva house was defective and had caused a fire—this defect had caused a fire a few days prior to April 8th, [21] and that no repairs or cleaning of the chimney had been accomplished in the meantime; let the record further show that John Silva who testified yesterday that there had been no fire prior to the one which de-

(Testimony of Helen Zamora.)

stroyed this home on April 8, himself climbed on the roof and put out the fire.

The Court: What do you mean "within a few days"?

Mrs. Hermann: About three days, I think. I would have to establish that by witnesses.

The Court: You should know.

Mrs. Hermann: Three days is what she has told me.

Mr. Folta: The reason why it is material is this: There is testimony here there was no fire in either stove and had not been for several hours, and the fire started in the bathroom, which is not touched with any chimney or anything else, and is therefore a separate matter, not tending to prove or disprove anything in this case.

The Court: I can't see any connection.

Mrs. Hermann: It proves a hazardous condition.

The Court: It isn't in the bath room.

Mrs. Hermann: There is no proof there was a fire in the bath room, except that it broke out there.

The Court: There is no proof there was any fire in any stove in the house. Fires don't start automatically.

Mrs. Hermann: I expect to put a fire expert on to testify they do.

(Testimony of Helen Zamora.)

Mr. Folta: This witness will testify the fire started in the bath room, and she examined both stoves.

Mrs. Hermann: I think expert testimony concerning the causes of fires is material, and I expect to offer proof of how the fire started, from three different sources.

Mr. Folta: That she can get that testimony doesn't make this testimony in regard to any fire previously, competent.

The Court: Until the proper foundation is laid this testimony you suggest would not be competent.

Mrs. Hermann: It certainly would be competent to impeach John Silva. [22]

Mr. Folta: It would be on an immaterial matter.

Mrs. Hermann: I don't admit it is immaterial.

The Court: As the record stands it would certainly not be competent. The offer will be refused.

Mrs. Hermann: Let the record show the defense excepts to the ruling of the court as prejudicial to the right of the defendant to show the cause of the fire which destroyed the building which he is accused of burning.

(The jury returned and took its place in the jury box)

\* \* \* \* \*

(Testimony of Helen Zamora.)

Q. (By Mrs. Hermann): I want to ask you now, Helen, if at the preliminary hearing in Petersburg at which United States Commissioner Dawes presided, and Mike was there, and Mr. Clausen representing him, you and Mabel and other witnesses, if Mabel at that time testified that she saw Mike run between the two houses.

Mr. Folta: Object to for the same reason I objected to the question addressed to her awhile ago, in regard to Mr. Fenn.

Mrs. Hermann: I laid the foundation for this one.

Mr. Folta: I challenge the record. I don't think Mabel Jackson was ever asked whether she was asked. All Mabel Jackson was asked was whether she testified without being shown that she was asked.

The Court: The way to properly lay the foundation for impeachment is to ask the witness in advance, whether or not they were asked a specific question and whether or not they did not give such and such an answer—in other words a specific answer.

Mrs. Hermann: The court will recall that I stood here and held that paper in my hand and asked the question from the evidence in the paper.

The Court: I know you had it. [23]

(Testimony of Helen Zamora.)

Mrs. Hermann: That is where I got the information and exactly how I asked the question.

Mr. Folta: But she did not ask Helen Jackson, whether or not she was asked that question.

(Further Discussion)

The Court: You may look at the record.

(The reporter read from the testimony of Mabel Jackson transcribed herein on 48, commencing at line 15 thereof to line 11, page 50, of this record.)

Mr. Folta: It will be seen there was no impeaching question asked. All she was asked was whether she had testified in such and such a way.

(Last question read)

The Court: That isn't the question and there wasn't any foundation laid for that question. The witness herself volunteered that. The witness herself said that, whether she said a tall man or something of that kind.

Mrs. Hermann: There were several impeaching questions. One was about a tall man.

Discussion—last question re-read.

Mr. Folta: It doesn't embody the impeaching question. It is not what she was asked but what she testified to. No foundation laid for it.

The Court: I quite agree.

(Testimony of Helen Zamora.)

Mrs. Hermann: I will reframe it, if that is what your honor wishes me to do.

The Court: You couldn't lay the foundation for it by any questions asked this witness.

Mrs. Hermann: I maintain the foundation is laid.

Mr. Folta: My objection is based upon the fact that no foundation was laid.

The Court: That is the basis of the ruling.

Mrs. Hermann: The Court rules against us, that we cannot impeach Mabel Jackson. That this witness does not need to answer?

The Court: Yes. [24]

Mrs. Hermann: Take an exception as denying us the right to impeach a material witness for the government, and being extremely prejudicial to the rights of the defendant. Let the record so show.

Mr. Folta: I think the record should also show no foundation was laid according to statute for such a question.

The Court: That is the basis for the Court's ruling.

Mrs. Hermann: We still except.

\* \* \* \* \*

Q. Helen, at the time of the fire, after you were out of the house and over to the Sons of Norway building, did you say to Alice, and your mother, Mrs. Silva being present, "We

(Testimony of Helen Zamora.)

shouldn't have smoked those cigarettes when we did?"

Mr. Folta: Object as self-serving.

Mrs. Hermann: She is not on trial.

Mr. Folta: That makes no difference; it is her declaration.

The Court: Whatever this witness said would not be material.

Mrs. Hermann: It would show what she thought—what caused the fire.

The Court: I don't think you even think that.

Mrs. Hermann: I certainly do; I object to the remarks of the court, as prejudicial to me and my defendant.

The Court: The court will rule the question is entirely improper.

Mrs. Hermann: We ask an exception.

The Court: Exception allowed.

Mrs. Hermann: We also object to the manner in which the ruling is made as prejudicial to the defendant and that——

The Court: The record will also show that it was brought about by the manner in which counsel addressed the court.

Mrs. Hermann: We further except to the attitude of the Court.

The Court: Go to something else. This controversy is over. [25]

## V. W. MULVIHILL

called as a witness on behalf of the defendant, being first duly sworn testified as follows:

By Mrs. Hermann:

Q. Will you state your name, please?

A. W. V. Mulvihill.

Q. Do you hold any official position for the City of Juneau?      A. Fire Chief.

Q. How long have you been fire chief?

A. Four years.

Q. Had you had any previous experience fighting fires before you became fire chief?

A. Yes Ma'am.

Q. How much?

A. Six months Los Angeles Fire Department—eight years in Sitka Fire Department.

Q. In connection with your work as Fire Chief in Juneau do you take and read books, periodicals etc. relating to fire prevention?

A. Yes Ma'am.

Q. Now, Mr. Mulvihill, in your experience as a Fire Chief, and fire fighter in your various capacities, have you had any occasion to find fires of unexplained origin?

Mr. Folta: Object as immaterial.

The Court: Sustained.

Mrs. Hermann: Exception to the ruling of the Court.

The Court: We are concerned only with this fire.



(Testimony of V. W. Mulvihill.)

Q. Mr. Mulvihill, you are familiar with what constitutes fire hazards?      A. Yes Ma'am.

Q. Would you say, Mr. Mulvihill, that a chimney fire occurring within a few days of an unexplained fire, might offer an explanation of the cause of the fire?

A. Object as wholly without foundation, not even approximating a hypothetical question. She pretends to have this person testify as an expert. [26]

The Court: Sustained.

Mrs. Hermann: An exception to the ruling of the court.

Q. Mr. Mulvihill, have you had any experience in fighting fires that would give you definite information about how long a spark might smoulder, without igniting?

Mr. Folta: Object as immaterial.

The Court: Sustained.

Mrs. Hermann: We ask an exception to the ruling of the court.

Q. Mr. Mulvihill, at a fire occurring in a building where oil was used as a fuel, would you have a bright fire, dull fire or what type of fire would you have?

Mr. Folta: Where—in a stove? I would like to have it fixed.

Q. I mean after the building catches fire.

Mr. Folta: Object, because there is no foundation laid.

(Testimony of V. W. Mulvihill.)

Mrs. Hermann: I tried to lay the foundation.

Mr. Folta: If it isn't in evidence there is no foundation now.

The Court: Objection will be sustained.

Mrs. Hermann: I renew my objections to the fact that I was denied the right to lay the foundation for the question.

The Court: You may detail the circumstances of the fire if you care to. That is the only proper question of this witness, called as an expert. He doesn't know anything about this fire.

Mrs. Hermann: He knows a lot about fires.

The Court: We are only concerned with one fire.

Q. Mr. Mulvihill, in a fire occurring several hours after there had been a fire in a stove, by a building becoming ignited, several hours after there had been a fire in the stove—a building which uses an oil burner for the kitchen stove, would such a fire make a hot, bright or a dull fire?

Mr. Folta: Object as immaterial and not embracing any of the vital or essential facts to any hypothetical question on which expert testimony can be based. [27]

The Court: Objection sustained.

Mrs. Hermann: We ask an exception to the ruling of the court.

(Testimony of V. W. Mulvihill.)

Q. Mr. Mulvihill, a building becoming ignited several hours after fires in both *stove* had been extinguished—could such a fire be caused by the presence of a spark that was smouldering in the woodwork?

Mr. Folta: Object to as not embracing the essential facts necessary to any such opinion.

The Court: Objection sustained.

Mrs. Hermann: We ask an exception to the ruling of the court.

Witness excused.

\* \* \* \* \*

GEORGE W. FOLTA,

called as a witness on behalf of the defense, being first sworn testified as follows:

By Mrs. Hermann:

Q. Did you have Mrs. Beulah Rafol *subpoenaed* as a witness in this case?

Mr. Folta: Object as immaterial.

The Court: Sustained.

Mrs. Hermann: I think it is proper now that the jury should withdraw, because I want to make an offer of proof.

The Court: Very well, the jury may be excused until called.

(The jury retires from the court room)

Mrs. Hermann: If the court please, I offer to prove by this witness that Beulah Rafol, who

(Testimony of George W. Folta.)

was subpoenaed as a Government witness, came to Juneau and was held as a Government witness, for a month approximately, and dismissed last Monday. The Court will remember the affidavit I filed in support of my motion for a continuance, in which these facts were set up. I want to prove by this witness that if Beulah Rafol were here, she would testify she saw Zamora (defendant) coming in after he had been out to the fire, wearing a bath robe, corroborative [28] of the statements of Helen Zamora and Mike Saludo, and denied by the firemen Mr. White and the night patrolman, Mr. Fenn.

Mr. Folta: This is just a bare faced attempt to prove something by my witnesses—evidence. She wants to ask me what somebody else told me.

Mrs. Hermann: I filed this affidavit asking for a continuance until I could get a witness here in person. Her evidence is certainly material. I am willing to prove this by his testimony if he is allowed to testify.

Mr. Folta: If the court please, the only thing the affidavit sets up for a ground for continuance is her own failure to have the witness she wanted subpoenaed.

Mrs. Hermann: No, it sets up the fact that the witness was induced to leave town afterwards.

(Testimony of George W. Folta.)

Mr. Folta: I resent that.

Mrs. Hermann: It is in the affidavit.

Mr. Folta: I would like to have her made to prove that. If she was induced to leave town the District Attorney wouldn't have anything to do with it.

The Court: There is nothing in this affidavit to indicate what her testimony might have been, if she was called as a witness.

Mrs. Hermann: It does indicate that it was material, and I offer to prove it.

The Court: That is a mere conclusion, of no value in the affidavit or otherwise, as you know.

Last question read.

The Court: Objection sustained. It has nothing to do with the issue of this case.

Mrs. Hermann: The Court will allow us an exception to the ruling of the court, as preventing us proving, by this disinterested witness the allegations, testimony given by the defendant's witnesses, who have been classed as "interested witnesses" by the government. (Discussion)

The Court: Exception allowed. Call the jury. [29]

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II.

The Court erred in overruling the defendant's motion for an instructed verdict of not guilty, made

at the conclusion of the defendant's case, after the Government had rested from presenting rebuttal evidence, as follows:

Mrs. Hermann: We would like to have the jury excused while we make a motion.

The Court: Very well.

(The jury retired from the court-room)

Mrs. Hermann: If the Court please, the defendant at this time, through his attorney, moves that the jury be directed to return a verdict of not guilty as charged in the indictment, for the reason that there is at the present time, no evidence to warrant a verdict of guilty as charged in the indictment. There has been no testimony introduced by any person to show that the defendant was on the premises prior to the fire, that he could have been in that room. On the contrary all the evidence is to the effect that he could not have been.

There has been no evidence introduced to show he used any means whatever to introduce into that room, or that anything was introduced into that room, anything of an incendiary nature, such as a torch, oil, rags or anything that could be considered inflammable. And there has been a complete failure on the part of the prosecution to connect the defendant with this fire, which is the alleged crime, in any way, that would warrant a verdict of guilty at the hands of the jury.

(Argument)

The Court: I think there is ample evidence to go to the jury. The motion will be denied.

[30]

Mrs. Hermann:: The Court will allow us an exception.

The Court: Call the jury.

\* \* \* \* \*

### III.

The Court erred in overruling the motion of defendant made upon the rendition of the verdict of guilty, to set aside said verdict, because it was not supported by the evidence in the case, as follows:

Mrs. Hermann: May it please the court, the defense moves that the verdict be set aside in the case of the United States vs. Miguel Zamora, as not supported by the evidence. Does the court wish me to argue this motion or just state it for the record? I argued it at the time I requested the directed verdict and have nothing more to say than I said at that time.

The Court: Very well; the motion will be denied.

Mrs. Hermann: We ask an exception to the ruling.

The Court: Exception will be allowed.

### IV.

The Court erred in denying the defendant's motion for a new trial as set up in detail in the Bill

of Exceptions, for which ruling exception was allowed.

## V.

The Court erred in denying defendant's motion to re-open the argument on a motion for new trial, to which was attached affidavits giving defendant an alibi for the night of the commission of the alleged crime. Said motion and accompanying affidavits are set up in detail in Bill of Exceptions, for which ruling exception was allowed.

The Court erred in denying defendant's motion for a continuance until Beulah Rafol, a material witness for the defence could be produced, to which ruling exception was taken.

## VII. (?)

That the evidence was insufficient to justify the verdict and that the verdict is against the law and the evidence.

MILDRED HERMANN

Of Attorneys for Defendant.

Service received and copy received this 28 day of June, 1939.

G. W. FOLTA

Assistant U. S. Attorney [31]

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[Title of District Court and Cause.]

## BILL OF EXCEPTIONS

Be it remembered that on the 14th day of December, 1938, at the hour of 10 A. M., the above entitled



action came on for trial before a jury, the Honorable George F. Alexander, District Judge, presiding, the Government appearing by G. W. Folta, Esq., Assistant United States Attorney, the defendant appearing in person and by Mildred R. Hermann, his attorney, and thereupon a jury was duly impaneled and sworn to try the cause, counsel on both sides made opening statements to the jury on behalf of the Government and the Defendant.

And thereupon the following proceedings were had and testimony taken, to wit:

WILLIAM GRANIER,

called as a witness on behalf of the Government, being duly sworn testified as follows:

Direct Examination

By Mr. Folta:

My name is William Granier, and I have lived in Petersburg, Alaska, for twenty three years, am acquainted with the John Silva property, and had been in two of the rooms of this house, living room and kitchen, about two dozen times prior to fire. I am familiar with the surroundings of the house, and the adjoining building and have drawn a sketch of the Silva house to represent approximately the floor plan and with reference to the adjoining house. (Plan is placed on blackboard at request of Mr. Folta, for purpose of illustrating the testimony of witnesses.) I have marked with a red pencil the letter "s" indicating the Silva house, and the letter

(Testimony of William Granier.)

“c” representing the cabinet shop adjoining. I have written the word “street” to indicate the street. This property is all over the tide-lands and the tide comes underneath both houses. [32] There is a platform in the rear of the Silva house. There is ingress and egress between the Silva house and the cabinet shop, so that a person could walk along next to the cabinet shop and step over to the Silva property.

#### Cross Examination

By Mrs. Hermann:

All that space, except the shaded area, which is about fourteen inches wide, is planking. The two houses are about four feet apart in front, and in the back about two feet apart. I have no official capacity and have never made any measurements at the request of the district attorney. Nobody told me how to draw this sketch, or gave me any instructions concerning it. I was in the house about a month before the fire—some time around about the first of April. I am not a member of the Fire Department at Petersburg and have nothing to do with the cabinet shop, next door to Silva’s. This is not the native section of the town, but just a part of the general residence section.

(Witness excused to be re-called later by the Government.)

## JOHN SILVA

called as a witness in behalf of the Government,  
testified as follows:

## Direct Examination

By Mr. Folta:

My name is John Silva and I have lived in Petersburg for 20 years; I was married there in 1916. My house burned down on the 8th day of last April. (Called to the sketch on blackboard, he indicates the front room, kitchen, bedroom and the small room adjoining, afterwards referred to as the bathroom). There were also two rooms upstairs, one in front and one in back. I have known Migual Zamora a little over two years. He married my daughter. Before the fire on April 8th, my daughter and her baby had been living with me about two months. The defendant, Migual Zamora, had been in my house many times. He and his wife *and* lived with me in the house for six months. On the day before the fire, the 7th of April, Zamora came to my house. He came to argue with his wife. He came pretty near every other day to argue with his wife. Before I left him in the house, but he made so much argument with his wife, my wife don't want him to come. The first time I kept him from coming in the house was the day before the fire, about four o'clock. First he knocked at the front door. Then he came round to the back door [33] where I was fixing my boat, on the platform built back of the house. I told him he could not come any more, be-

(Testimony of John Silva.)

cause he had made a lot of trouble when he came to the house, and he said that so long as I kept his wife there, he would never stop coming. When I told him he could not come there any more he said he was going to kill someone in the house. He said he would make my house suffer, and everyone in it. After he crossed the street, he said: "You are very proud because you got a house. You will never see your house some day." He said I was not going to have any more house some day, and I would find out what he was going to do to the house some day. And then the house caught on fire that same night—half past one. His wife came to stay with me because they were always fighting. I had a heater and a cook stove in the house the day before the fire. The heater was in the front room and the cook stove was in the kitchen. I had one chimney in the house; (goes to sketch on blackboard and draws square to represent chimney) the chimney was made of blocks—cement. I went to bed about ten that night and all the girls went to bed before I did. There was Helen Zamora, Mabel Jackson and Alice Bassford and they were all sleeping in the bedroom downstairs. I was sleeping in the back bedroom upstairs and my wife was sleeping in the front bedroom upstairs. All three the girls were sleeping in one bed in the bedroom downstairs. After I went to bed, I heard someone calling me. It was Alice, and she said the house was on fire. I got up quick, and put on my shirt and pants and

(Testimony of John Silva.)

ran out. I put no shoes on. I ran downstairs and looked in both stoves, and there was no fire in them. I thought the fire was in the roof so I ran outside and looked, there was no fire on the roof, so I ran back and asked where the fire was, and Alice told me it was in the bathroom. Then I went to the door and looked and the whole bathroom was on fire. I had a box of tools there and nothing else. It was nothing but a storeroom. There was a window opening on the outside. It was open that night. There was no curtains and nothing to catch fire. The fire had been put out in the kitchen when we were through cooking. It was kinda rainy weather. After I saw the fire in the bathroom, I ran back to the sink, and took a water bucket and filled it and threw it on the fire, and it seemed to splash all over like gasoline. And as soon as I threw the water, I smelled gasoline. The smoke was black, and as soon as I filled the bucket again, and threw it again, and the whole fire came outside in the bedroom and burned all my hair off, [34] and my face. Then I threw the bucket and ran outside for help. My wife was upstairs. After I called for help, I ran upstairs, and found her half way down. She only got half way down. She was choking. I packed her down on my shoulder and into the street. Alice had gone to call the fire department, Helen and Mabel were already out. I was the last one out. I just stood and looked at the fire. My house burned down. It did not take very long until it was all

(Testimony of John Silva.)

gone. All I had on was my pants and shirt; my wife and Helen had the clothes on they were sleeping in. I did not have any insurance on the house. And I did not owe any money on the house. I paid the mortgage off. After I got out, I told White, one of the firemen, what Zamora had said to me. Afterwards I told the policeman, Clifford Fenn. Afterwards Fenn and White and I went to Zamora's room. The door was locked. He knocked—no answer—then he tried the lock again—then he knocked again, hit the door hard and no answer. Then he broke the lock, and there was Miguel, just like he was sleeping. He had a blanket over his face. I saw him at the fire. He was there when the building next door started to burn, about half an hour before we went to his room.

#### Cross Examination

By Mrs. Hermann:

Helen is an adopted daughter and so is Mabel Jackson. Zamora and Helen had been married about three years, and their baby was about seventeen months old. It had been about eight months since Helen and Zamora had lived at my house. I had no trouble with them at that time, but he and Helen quarreled all the time. My wife quarreled with him all the time, too, because he and Helen fight all the time. Mike did not bring anything with him the day he came to the house, the day before the fire. He came to the front door, and then to the back

(Testimony of John Silva.)

where I was working on my boat. I was washing it and scraping it. I did not do any painting. (Witness marks on sketch door between kitchen and living room.) There is no door between the kitchen and bathroom. The only entrance to the bathroom is through this little bedroom. The window in the bathroom is about 2 by 3 feet. It is about four feet from the floor. It opens inside, has hinges on the bottom. The chimney is right in the middle of the partition between the kitchen and living room, so it can take two pipes, one from the kitchen and one from the living room. The heater is about three feet from the wall. The pipe has one [35] elbow and pipe. The kitchen stove has one long piece, elbow and shoulder. The cook stove was two feet and a half from the bathroom partition. I used oil in the kitchen stove. It was a regular oil burner. One year I burned wood and coal in it and then I put the oil connection in. And I have been burning oil about a year now. In the heater I was burning wood the evening of the fire. I clean the chimney once in a while. I scrape it out from the pipe inside. I never scrape it from the top. I have lived in that house since 1935. The chimney was there when I moved in. It is not an old house, about half old. I do not remember when was the last time I cleaned the chimney. I have no recollection at all. I told Mr. Folta at the *preminary* hearing in Petersburg that Zamora had threatened me. I told Fenn the

(Testimony of John Silva.)

marshal Mike also said I wouldn't have any house. Mike never said I would not have the baby in my house long. There was a big bed in the bed room that night. The baby was sleeping in the bed with the three girls. The bed almost filled the room. There was just enough space left to go through. We went to bed about ten, I think. The kitchen or cook-stove was shut off after we were through cooking that night, around 7 o'clock. We then went to the front room and sat in there and never went to sleep until there was no fire in the heater. I did notice that there was no fire in the heater when we went to bed. I did not look at the clock. The tide was very low at the time of the fire. The beach was dry way down. I did not smell gasoline until after I threw water on the fire. The fire was in the walls and ceiling and all over so that I had to throw the water up. There was fire around the floor close to the window, to the front of the street. It was all fire on the walls and bottom. The fire department did not come for fifteen minutes after I went outside. The whole thing was burning when the fire department arrived. The next house caught fire from the same window. When that flame go outside the window it catch fire to the other building. It caught fire from the same window that was open. Both buildings burned up. I don't know how long it was before the fire was under control but daylight came. I don't know because I had no watch. It was half past one



(Testimony of John Silva.)

when Helen called me, I had a clock right by my bed. We never had a fire there a few days before. If there was a fire then I never saw it. When I went to Zamora's room with Mr. Fenn and Mr. White, the fire was not entirely out. Zamora lived about a block away. [36] There was nothing in the storeroom except a box of tools and trolling lines. There were no dirty clothes, papers and magazines. I cleaned that room before.

Witness Excused.

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### MABEL JACKSON

called as a witness for the Government, being duly sworn testified as follows:

#### Direct Examination

By Mr. Folta:

My name is Mabel Jackson; I am 11 years old. I have lived in Petersburg all my life. I was in Silva's house, when it caught fire last April. I was sleeping in the downstairs bed room, next to the bathroom. Alice and Helen were sleeping with me, the three of us in one bed; I found out there was a fire when I smelled gas. Alice waked me up and asked me if I smelled gas. I got up and went into the hall. I just put a raincoat on over my bedclothes. I waited for Helen and she gave me the baby to hold while she fixed the buggy. We went over to the Sons of Nor-

(Testimony of Mabel Jackson.)

way Hall. Helen put the baby in the buggy and I went with her. Alice left the house first and then Helen and me. We went across the house without stopping. I know Mike Zamora. I knew him before the fire. I saw him that night in front of the Variety Theatre. He was going to the fire. The theatre is not far from Silva's place. It is on the same side of the street as Silva's house and toward town. The first time I saw him after I knew there was a fire was between the house and the machine shop (cabinet shop). He was running. I was in the hall of the house holding the baby. I do not know where he ran.

#### Cross Examination

By Mrs. Hermann:

I saw Mike between the machine shop and our house while I was in the hall holding the baby. He had on a black hat, brown jacket and black pants. There was a street lamp there. I did not see his face. I saw his side. He was running, not so fast. He was running between the two houses. I testified at the trial, in Peterburg just like I have here to-day. I said at the trial there that I saw Mike running between the two houses. I never said at Petersburg that I saw him by the Sons of Norway Hall. Nobody told me to change my story. I said at the trial at Petersburg that I saw him between the two houses. I have lived with the Silvas a long time. Neither one of [37] them told me what to say

(Testimony of Mabel Jackson.)

at this trial. They did not tell me what to tell Mr. Folta. I never went into the little room myself. I never saw the fire until I got out of the house. I just smelled gas. The fire department had already arrived when I saw Mike going past the theatre. The first person who came to the fire was Mike Saludo. That was before the fire department came. Mike Zamora had a bathrobe on when I saw him go past the theatre. He was walking, just going to the fire. Helen's baby was sleeping in the bed with us three girls. I was the first one to go to bed. I did not hear Helen or Alice come in and go to bed. I went to bed early. Mike lives close to the Variety theatre. He lives further toward town than the theatre.

#### Redirect Examination

By Mr. Folta:

I just saw a little light before I left the bedroom. I never did see Mike over by the Sons of Norway Hall. I first told some one I saw Mike between the two houses the same morning the fire was. I told it to John Silva' at Grace's place. Where we went after the fire.

#### Recross Examination

By Mrs. Hermann:

John did not ask me if I had seen him, I just told him.

Witness Excused.

## ALICE BASSFORD

called as a witness in behalf of the government, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Folta:

I am Mrs. Alice Bassford. I was living with the Silvas last fall when their house caught fire and burned. I was not asleep that night. I went to bed at ten o'clock in the bedroom downstairs, next to the kitchen. Helen Zamora and Mabel Jackson occupied the bed with me. I did not go to sleep at all that night. I got up about twelve o'clock and stayed up five or ten minutes. Then we did not get up again until the fire started. I smelled gas and that was the first warning I had. I do not know what time it was. I waked Helen up and told her I smelled gas, and we both got up and looked at the oil burner. There was nothing there; then she went back into the bedroom and there was a flame coming out. I saw the fire and she told me to call John. The fire was in the bathroom. I had been in that room that day; the window was open. [38] I opened it myself. After I saw the flames, I waked John up; then I ran out. I put my *bathroom* on over my nightgown and ran out bare-footed. I ran to the Petersburg Press. There was a man there. He put in the alarm. I ran back to the house. They were all out of the house then and we just stood over by the Sons of Norway Hall across the street. Helen

(Testimony of Alice Bassford.)

had a coat on over her nightgown. She was bare-footed. The fire had spread. It was quite a long while before the fire department came—about fifteen minutes. I know Mike Zamora. I stayed with him and his wife for about a week, three years before the fire. I saw him at the Silva house the afternoon preceding the fire. He was knocking at the front door. I was writing a letter and I was going out the front way but Mrs. Silva told me not to go that way. I went out the back door, and he was still at the front door when I went by. I saw Zamora at the fire, he was by the Sons of Norway Hall, looking at the fire. I do not recall whether that was before the fire department came or not.

#### Cross Examination

By Mrs. Hermann:

I went to bed that night after John did, but Helen was already in bed. I figure it was around ten. I did not sleep. The baby had a bed on two chairs next to our bed. The room was well filled with the two beds—it took all the room. I took some sleeping medicine that night, I took two. I did not go to sleep, even after taking the medicine. I did not wake Helen at twelve o'clock, and ask her to have a smoke with me. We got up at twelve o'clock, and went to the bathroom. We smoked—no we did not smoke—we just went out to the toilet there. We had an outdoor toilet. We did not go into the bathroom

(Testimony of Alice Bassford.)

that night. I had opened the window a few days before and it had been open ever since. The window was fastened at the bottom. I had my clothes in the storeroom (bathroom). I think Helen had clothes there, too, belonging to her and the baby, but I didn't notice. There were some boards in there. It does not open into the kitchen, only into the bedroom. The window was about that big (indicating). It opened inwards and toward the room. I had it open only a part of the way. Mike did not bring anything to the baby that day. I smelled gas fumes. I have used gas in lamps and smelled it on boats. They did not burn gas in the stove, but we looked in the stove anyway. Helen thought it might be leaking, [39] but it wasn't leaking. I remember Helen saying, after the fire right outside, "I shouldn't have smoked in there", or something like that. I did not smoke in the room there. I had been awake the whole evening before the fire. I had not been asleep at all. I did not hear any sounds at all, either in the house or outside. I was wide awake. When I first saw the fire it looked like it was coming in at the open window. It all exploded in the room there. It was a small sound like it was muffled. It was about morning when the fire was out. It would take me about ten minutes to run to the Petersburg Press, from Silva's, where I told them of the fire.

(Testimony of Alice Bassford.)

Redirect Examination

By Mr. Folta:

Witness designated outside toilet by marking square on the sketch submitted in evidence.

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WILLIAM GRANIER

recalled by the government, testified further as follows:

Direct Examination

By Mr. Folta:

I saw the defendant Zamora on the afternoon preceding the fire at Silva's house. He was in the alley between the house where I live, and the Silva house. He was within eighteen feet of my house, and it was about four o'clock in the afternoon. He was arguing with Silva. When they got under my window I could hear what they were saying. I heard Zamora tell Silva he was mighty proud of his house. Then he said "Some day you won't have no home, then you won't be so proud". I did not hear anything about killing, but he said he would get some one in the house. They were angry. I first knew there was a fire in the Silva house about a quarter to two. I was in bed. I had been asleep, but I woke up about a quarter after one and got up. There was nothing that attracted my attention, outside

(Testimony of William Granier.)

the house. I stayed up about twenty minutes. Then I went back to bed. The next thing that attracted my attention was John Silva hollering my name over and over again. He was saying: "Bill, my house is on fire." I jumped up and put on part of my clothes. I have no definite way of fixing the time. It was around a quarter to two. I ran down and saw I could not do anything. Before I ran down I saw a light—reflection of fire—between the two buildings, John Silva's house and the cabinet shop. When I got down to the street, there was no one there except the Silva family. I ran back, wrapped my boy in a blanket and left him at a place about 200 [40] feet away. When I took him out there were other people there—the Silva family and about twenty others were there. I saw the defendant by the Sons of Norway Hall at that time. The fire alarm sounded before I got my boy out, when I went downstairs the first time. The people started to gather before the fire truck came. When I saw the defendant he was dressed in a dark blazer, dark pants and black hat. I heard no crackling sound when I first noticed the light from the fire. The thing that attracted my attention to the fire was that it made a very bright light—ordinary wood fire makes a dull flame.



(Testimony of William Granier.)

Cross Examination

By Mrs. Hermann:

We have had five fires in our family and I am somewhat afraid of fire. My house did not burn that night—I was just damaged by smoke and water. I saw Zamora on the porch of the Sons of Norway Hall. The fire department was just arriving at that time. I know Zamora quite well. The conversation between Silva and Zamora took place outside my window, about twenty feet from my window. They were talking rather loudly and excitedly until they got under my window, then there seemed a rather deadly stop. I heard Zamora say he would get someone in that house. He said: “You are awful proud of that house. Someday you will have no home, then you won’t be so proud.” I did not hear him say he was going to kill somebody or that he would make everybody in the house suffer. It was about a quarter after four. They talked about fifteen minutes, I did not see where Zamora went after he left there. I do not know Mike Saludo, but I recall seeing no Filipino there, except Zamora, in front of the Sons of Norway Hall. The Silva house burned fast, was consumed within twenty minutes, the other building burned slow. The fire department was there around two and one-half hours. It was breaking day when it left. I did not see Zamora anywhere near the house, at any time prior to or during the fire. I do not

(Testimony of William Granier.)

know when the fire alarm was turned in. I testified at the preliminary hearing in Petersburg. Mr. Folta was not there. I did not go back to sleep between the time I got up, and the time I heard Silva calling me. I heard no noise of any kind during that time, no talking and no movement.

#### Redirect Examination

By Mr. Folta:

The only part of the argument I heard between Zamora and Silva was when they were under my window. I don't know what they said when they [41] got out of earshot.

(Witness excused.)

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#### ULEY V. WHITE

called as a witness in behalf of the Government, being duly sworn testified as follows:

#### Direct Examination

By Mr. Folta:

My name is *Uly V. White*. I have lived in Petersburg twenty years. I am a member of the fire department and was such last April, when the John Silva house burned. I was at that fire. I had not been to bed at all that night when the siren rang. I was at home, about half a block from the fire hall. I immediately went and got on the truck. I waited not over two or three minutes for the driver to come. It

(Testimony of Uley V. White.)

was about five minutes from the time the siren blew until the truck started. It is about two blocks from the fire hall to the Silva house, and the first stop was made at the fire hydrant near Silva's house. After we arrived at the Silva house, I saw the defendant, Zamora. He was trying to help me string out the hose, as we were getting the equipment out to fight the fire. There were people standing in front of the Sons of Norway hall. The defendant was wearing a black jacket. It was a shiny black leather jacket. John Silva made a complaint to me while I was there. I told him to see Fenn, the marshal. This was around four or five in the morning, after we had the fire under control. The fire siren blew between 1:30 and 2:00 o'clock. I did not look at the clock at any time after the siren blew. Mr. Fenn, Silva and I went up to Zamora's room which is about half a block from the Silva House. Mr. Fenn is the night policeman. Zamora's room is at the back part of the Sing Lee Building, about three buildings down from the Silva residence, or about half a block. Mr. Fenn hammered on the door. We got no response so he called: "Mike". Still no response. So he grabbed the handle and started to shake it a little and the little latch on the inside came off and we walked in. He hammered on the door very loudly and then shook it until it became unlatched. We walked in. It was breaking day, fairly light, but Mr. Fenn turned the flashlight

(Testimony of Uley V. White.)

on him in bed. Mike was apparently sound asleep. When Fenn hollered at him he rolled over and stretched. Fenn [42] told him to get up and put his clothes on, which he did without comment. When he was sitting on the edge of the bed putting on his sox, he asked Cliff (Fenn) what he had done and Cliff told him he would find out soon enough.

#### Cross Examination

By Mrs. Hermann:

I have been a member of the fire department about a year. It is a volunteer department. I have a card room and beer parlor in Petersburg. I have lived there about four years. I do not know exactly when the fire alarm sounded that night. It is rung from the telephone office. I am not the fire chief, just a fireman, and I work wherever they need me. The night of the Silva fire I worked on the hose. Zamora was trying to help me with the hose. I do not know Mike Saludo, but I have known Zamora since 1933. I did not see any other Filipino there that night helping with the hose. I found Mike something of a hindrance, and I asked him to get out of the way three times. He was trying to help, but he didn't know how. When we arrived the Silva house was in flames, but the part fronting the street had not been consumed yet. The building next door was not on fire. We were there all of three hours. It was broad daylight when I

(Testimony of Uley V. White.)

went home. I was present when John Silva made the complaint about Zamora to Fenn. He complained to me first. I did not see anyone at the fire in a bathrobe. It was two or three hours after the fire started when we went to Zamora's room. It was not more than ten minutes from the time the alarm sounded until we reached the Silva house. The fire was burning mostly at the back and toward the roof.

Witness excused.

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### CLIFFORD FENN,

called as a witness in behalf of the Government, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Folta:

I am Clifford Fenn. I have lived in Petersburg for three years. I am night patrolman for the City of Petersburg. I was such last April. Before the fire at Silva's house last April, I saw Zamora about two or two and a half blocks from Silva's place. It was a little after one o'clock in the morning. He was going in the direction of Silva's house and his own room. Apparently he was coming from one of [43] the beer parlors. After I saw him I finished my round and went down to the City Float. That is about two and a half blocks from Silva's house. I saw the fire before the siren sounded. I walked

(Testimony of Clifford Fenn.)

out clear to the end of the float, and was fooling around there, and there was no fire then. If there had been I would have seen it because I looked in that direction. As I was going back and pretty near the ramp I noted the fire. I would see flames very distinctly. They were shooting into the air. I ran to the telephone office to give the alarm. It happened I was not the first. A taxi driver got there just before I did. We turned in the alarm and I got into his taxi and drove to Silva's house. It is about 500 yards from the ramp of the City Float to the telephone office. I was just getting into the taxi when the siren blew. I was at Silva's house long before it quit. When I reached Silva's house I saw the family there; also Zamora. Granier was also there. After the fire Silva made a complaint about Zamora to me. So I went over to get Zamora and took him into custody. I found him in his rooming house. I had to get into his room by force. I knocked and hammered and kicked and yelled and rattled the door until I loosened the hook it had on it. Mike was apparently asleep. I awakened him and took him to jail. He asked me what he had done and I told him I would find out sooner or later. I asked him if he had heard the siren. He said he hadn't. He said a lady in the building had told him about the fire. She was yelling fire in his rooming place and it waked him up.

(Testimony of Clifford Fenn.)

Cross Examination

By Mrs. Hermann:

I do not recall how he was dressed. I didn't notice. I testified at the preliminary hearing but I never described him in regard to his clothing. When I saw him at the pool room he wore just ordinary dark clothes. I know Mike pretty well. I have never arrested him before, but he hasn't been the best boy in the world. The beer parlors in Petersburg close at one o'clock. When I saw Mike it was right after they had closed. I did not notice that he carried anything. I went to the beer parlor and looked in and they were just closing so I would say it was within a minute of one o'clock. He was within a few steps of the beer parlor when I saw him. That is a place called Charley Mann's Beer Parlor. It is an ordinary place, frequented mostly by the white trade. [44] It is about two blocks and a quarter from the Sing Lee Building. Silva's place is about a block beyond where Zamora lived. There are several buildings in between where Mike lived and the Silva house, two commercial buildings and privately owned homes. It is about the middle of the native section of the town. It was half an hour any way after I saw Mike before I went out on the City Float, I guess. The fire would have had to gain considerable headway before I could see it from where I was. If the fire had started inside I could

(Testimony of Clifford Fenn.)

not have seen it until it got through the roof and flamed up high. It was quite a fire when I saw it, flames shooting up quite a ways. It was not five minutes after I saw the fire until I was at the Silva house. I ran to the telephone office first. It was about 500 yards. It is not a block, I should judge, because the telephone office is only about two doors from the approach to the Float. I got in the taxi at the telephone office and drove to the fire. The fire department got there about five minutes after I got there. The building was all ablaze at that time. Silva complained to me in the presence of White and the fire chief that Zamora set fire to the building. It was between four and five o'clock when I went to Mike's room and arrested him. I made plenty of noise and he did not respond. I recall using the flashlight but do not recall whether or not I turned it on his face. I have been night patrolman about a year. Before that I was a motion picture operator. I fished out of Petersburg odds and ends, worked in the Cold Storage, just whatever happened to come up I had a chance to do.

#### Redirect Examination

By Mr. Folta:

I guess I meant five hundred feet instead of 500 yards is the distance from the City Float to Swanson's. I don't know how long the approach to the City Float is; I am a very poor judge of distance.



(Testimony of Clifford Fenn.)

The fire alarm sounded between 1:30 and 2:00. When I arrived there the flames were coming from all the windows of the Silva house, windows, doors, walls and ceiling or roof. When the fire department arrived the fire was beyond control.

(Sketch made by Granier was here introduced in evidence for purposes of illustration.)

Mr. Folta: The Government rests. [45]

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Defendant's Case.

HELEN ZAMORA,

called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mrs. Hermann:

My name is Helen Zamora. I was formerly married to Mike Zamora. I got a divorce from him on August 12, after the fire at Silva's house. I have lived for some time at the Silva house and am familiar with it. (Identifies sketch as showing accurate picture of arrangement of house, and outside surroundings.) I do not know of any platform between the two houses. I have lived there a long time. If anyone wanted to go from the front to the back between the two houses, they would have to go down on the beach or over the roof.

(Testimony of Helen Zamora.)

They could not run between the two houses except on the beach. I was sleeping in the downstairs bedroom the night the fire occurred. Alice, Mabel and me and my baby all slept there. I put the baby to bed at seven and laid down with her. Alice and Mabel came to bed later. I do not know when they came. I did not wake up then. I put some pillows on two chairs and made a bed for the baby beside the big bed. There was hardly any room left. The room where the fire started is a very small room. You get into it by the foot of the bed in our room. There is only the one door leading into it. To go past the foot of the bed, you have to turn sideways to get in. There was old clothing in this room, mine and the baby's and some of John's. It was John's clothes that he wore outside working on his boat, painting and things of that sort. There is a window in that room, which faces the cabinet shop. It is not a big window. It opened inward from the top. The fastenings are at the top. I have to stand on a box to open it. The lower part is about with my eyes. The top of the window is about 18 inches from the ceiling. The window opens back into the room about 1½ feet. There is something nailed there that keeps it from opening any wider. There is a lace curtain on the window. We used an oil burner in the kitchen stove. It used to be a wood stove, but a man changed it into an oil burner. There are two oil tanks, one right close to the

(Testimony of Helen Zamora.)

house, and one a little ways from the house. The pipe runs under the house. [46] There is no pump to pump the oil—it flows of its own accord. There was a small heater in the front room. We burned wood in it, and sometimes coal. There is one chimney made of cement blocks. Nobody can get behind the heater though. The kitchen stove is about 2½ feet from the bathroom partition. There is a paper behind the stove, supposed to be fireproof. It is the same in the front room. The house is not plastered. I discovered the fire. Alice wakened me and told me she smelled gas. I got up and looked in both stoves. There was no fire in either one. Then I went back. Alice and Mabel started running from the house, but I went back to get my baby from the bedroom. The fire was in the little room. I saw the light on the door. I put the baby in the buggy and pushed her out on the street. Then I went back in the house and started to run water. Before I ran out, I called John. I took the baby out of the house, and told Mabel to wheel her away from there. Alice ran back in the house and got her bathrobe, and ran to turn in the fire alarm. John came down as soon as I called him. He had a union suit on—no trousers, no bathrobe. I gave him the water I had run and told him to throw it on the fire. He did. I ran another bucket full and he threw that too. Then he ran out of the house. I next saw him when he picked my

(Testimony of Helen Zamora.)

mother up from the foot of the stairs. It was a long time after Alice left until the fire department came. There was hardly any house left when they came. I saw Mike Saludo at the fire before the fire department came. He is a Filipino who is married to a native woman in Petersburg, I saw him after the fire truck came also. I saw Mike Zamora and heard him ask where the baby was. He was wearing a bathrobe, blue with lighter trim. I did not see him leave. I saw him afterwards and he was wearing a leather jacket and dark pants. It was a leather jacket, next to a dark orange. I know he did not have a black jacket at that time. After I lay down with the baby I stayed in bed until about 11. Then I got up. Alice did too. We smoked, both of us. We started smoking in the kitchen and continued on into the bedroom. We had one cigarette and we took turns on it. We were up about ten minutes. I do not know what became of the cigarette butt. I talked with Mike in the afternoon before the fire. He brought a coat and hat for the baby. He came to the Silva house frequently after I left him. He came to see the baby. He was fond of the baby. He tried to get me [47] to come back and live with him. Mike and I had been married nearly four years when we separated. Mike is a sound sleeper because he is kind of deaf in one ear. All the time we were married, I had trouble waking him up, because he was deaf in one ear.

(Testimony of Helen Zamora.)

Cross Examination

By Mr. Folta:

I separated from the defendant about three weeks before the fire. I was at my father's house the whole three weeks. Mike came often to the house, but not every day. Sometimes we quarreled when he came, about half the time. My folks always interfere, especially my mother. They did not want him to come to the house because every time we quarreled my mother would say something and then she would get a heart attack. Mrs. Hermann got my divorce *from* me on August 12. Sometimes I have felt sorry for divorcing him. I have felt sorry for him ever since he was arrested. I have not been to the jail to see him many times. I sent no messages to him, and only one gift. Both Alice and I started smoking. Alice got a package of Chesterfields, and I got the matches from the shelf. We started smoking in the kitchen and then went to bedroom. We had one cigarette and we took turns with it. We were up about ten minutes. I do not know what became of the butt. Alice was not out of the bedroom after we started smoking. I did not tell the grand jury we each smoked a cigarette. I do not remember whether I told the grand jury I threw my cigarette in the toilet of the bathroom. I don't know whether I told the grand jury that but I wouldn't deny it. I didn't say anything to the grand jury about being in the lavatory outside

(Testimony of Helen Zamora.)

the house. It was only after Alice told the grand jury that she went to the lavatory outside the house, that I came back before the grand jury and changed my story and told them I went to the lavatory. I thought I said from the beginning that we smoked one cigarette. There was no toilet in the bathroom and we could not have thrown the butt in the toilet. I did not tell you in your office that I was sorry I had told so many lies. I just said I was sorry I told them about a hole in the floor to throw the butt through when there wasn't any hole there. I went before the grand jury a third time and told them there was no hole there to throw the butt through as I had told them the first time. I did not tell the [48] grand jury the window was open or closed. I did not know. I do not know whether I told the grand jury the first time that the window had been closed or locked. The first time we opened it John Silva got after us. He is so scared of fresh air he didn't want us to open the window. I started talking about the cigarette story in front of the Sons of Norway Hall, and after we got to Grace's place. I did not tell it at the commissioner's court because my mother told me not to. I wasn't asked anything about a cigarette at the commissioner's court. I never told Mike about the cigarette, or talked with him about the case. Christenson wouldn't allow us to talk about the case when I saw Mike in jail in Petersburg. No other Fili-

(Testimony of Helen Zamora.)

pinos have talked to me about the cigarette. I do not know that all the Filipinos in Petersburg have lined up for the defendant. There have been no Filipinos talking to me and trying to get me to tell this story about the cigarette and to make it appear the fire started from a cigarette. I testified before the grand jury that I had never been in the space between the buildings but I could see it from the window. I have never been walking between the buildings. I had nothing to walk on. There is a platform but not all the way to the rear. I have never seen people walking there. There is a big platform in the rear. You have to jump across about fourteen inches in the rear. It is not quite connected at the rear. I did not see what happened when my father threw water on the fire. I was in the kitchen running water in the other can. Mike did not have a dark jacket unless he bought it after I left him. I have never seen him have such a thing.

#### Redirect Examination

By Mrs. Hermann:

I was subpoenaed as a witness. I did not want to come. I was not asked any questions at the preliminary hearing in Petersburg about a cigarette. They just asked me if I saw the fire.

Witness excused.

## MIKE SALUDO,

called as a witness in behalf of the Defendant, testified as follows:

## Direct Examination

By Mrs. Hermann:

My name is Miguel Saludo. I am known as Mike Saludo. I live in Petersburg. I know Mike Zamora and Helen Zamora. I was at the fire [49] which destroyed John Silva's house in April. The fire department was not there when I reached the fire. It did not come for ten minutes—something like that. John Silva's whole family was there on the Sons of Norway porch. After the fire department arrived I saw Zamora trying to hold the hose for the fire department. I was trying to help also. Mike had on a bathrobe at this time. And black pants. Mike asked me "Where is Rosita and Helen?" Rosita is the baby's name. I told him they were safe on the porch—the whole family is safe. One man, the mayor of the town, arrived. I was about to pull the hose and he ordered me to get out from the hose, so I got out. I did not see Mike again. The only time I saw Mike he had a bathrobe on.

## Cross Examination

By Mr. Folta:

I have known Mike Zamora about five years. I did not know him in the Philippines. He did not come from the same place. I have been picking shrimp in Petersburg. We picked in the same can-



(Testimony of Mike Saludo.)

nery. I was living in Sing Lee's cabin the night of the fire. Same place as Mike Zamora. My room was number 10. Zamora lived upstairs. I do not know the room number he had. The bathrobe he was wearing was outside his pants. I did not see him any more. It was eight, nine minutes after the firemen came, something like that that I saw him. The whistle blew about a minute before I came out of my room. Before the fire truck arrived, I was on the porch with the people of the family. I saw the fire, big already, going up to the Sons of Norway. When I first got on the street, I saw the fire, sparks and flame. That was why I went in the direction of the Sons of Norway. When I got to the Sons of Norway Hall, the whole family was there. People were coming on from other places. Everybody was trying to help kill the fire. I do not know if they were all firemen. I did not come here under subpoena. I just came to tell the truth of what I saw. They did not send me a subpoena at the hearing at Petersburg. Nobody asked me to come. I have not discussed the case with the Filipinos in Petersburg to see what we could do to help Zamora. Filipinos keep quiet in Petersburg about this case, for fear someone find out they know something.

(Testimony of Mike Saludo.)

Redirect Examination

By Mrs. Hermann:

Nobody asked me to come to Juneau. You asked me to come up [50] here and testify, after I told you what I knew.

Witness excused.

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Note: The testimony of Henry Roden is omitted here, as none of it, material to the case, was allowed.

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MIKE SALUDO,

recalled by the prosecution, testified on cross examination as follows:

I was in jail in Petersburg with the defendant—in the same cell. I never talked with him about this case there. I have never been convicted any other time. I am a member of the Filipino Club in Petersburg. Zamora is also a member. The club has not been raising money for his defense. I came to Juneau because we got through working in the cannery down there. My home is in Petersburg but we got discharged down there because of Union activity. My wife is in Juneau. We came to stay here, to get another job.

Redirect Examination

By Mrs. Hermann:

This is my wife's home.

Note: The testimony of V. H. Mulvihill, witness for the defendant, is omitted here, because all but the preliminary questions, qualifying him as an expert witness, was ruled inadmissible by the Court, and his entire testimony is given in the Assignment of Errors.

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PETE VILLARDI,

called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

By Mrs. Hermann:

My name is Pete Villardi and I live in Petersburg, I know Mike Zamora. I was living in Petersburg on April 8th last spring. I lived at the Sing Lee Building. Mike Zamora lived in the same house. I live below Mike's room. He had the room above me. I remember the night the fire destroyed Mr. Silva's house. I heard Mike in his room that night, about 1:30. I heard him talking. He said: "Come here, Rosita, I love you." Rosita is his baby. I was reading a book. I never heard the fire alarm, but I heard people running. I did not go to the fire.

Cross Examination

By Mr. Folta:

I did not hear because I live in the middle of the house. [51] I hear good. I did not hear the

(Testimony of Pete Villardi.)

fire alarm. I can read English a little bit—not much. I read the part in the paper which stated I testified at the preliminary hearing. I read what I testified. I cannot answer your question whether the paper stated what I testified to, because I can't read pretty good English. I read the paper a little bit. What the paper said was true. I am right down below Zamora's room. My room is number 2. I do not know Zamora's number. He ain't got no number. I was not right below—there is a little woodshed. I told the jury I was directly below, because it is the same thing. I call it below because Zamora stay on top of house. I was not trying to help Zamora. I got the subpoena to come here a long time ago. I have not been down to see Mrs. Hermann while I was a Government witness. I testified at the Commissioner's Court that I heard Zamora come in about one thirty. I said I knew it was Zamora because no one else ever came into that room alone. I did not hear Zamora come up the steps or down the hallway. I heard him walk in. I think he went to bed. Afterwards I go to the fire. I did not see Zamora at the fire. I did not hear the policeman pound on his door. I am a sound sleeper. I knew there was a fire because I heard people living in the place running. I had not been to sleep. I went out back, about twenty feet on the beach, and looked at the fire. I did not go to the fire. I watched my things. It

(Testimony of Pete Villardi.)

might burn that house, too. I did not hear the fire alarm, nor the fire truck. I did not talk over the case with Zamora. I have talked with him since he was in jail. I stayed there about 60 days too. We did not talk about the fire because it was dangerous to myself to talk about the fire. I have never paid out any money to help Zamora's defense. The other Filipinos and I have done nothing about helping Zamora out. I did not go down and tell the defense that I had been discharged as a Government witness. They just found it out someway.

#### Redirect Examination

By Mrs. Hermann:

I do not think I had a subpoena for Zamora. I got that subpoena in Petersburg. I have not had one since I came here. I was not in jail in Juneau since Mike was arrested. I served 60 days in jail in Petersburg. I was paid off as a Government witness about ten days ago, I think. After that I came to your office. Last night is [52] the time I go to your office.

Witness excused.

GEORGE W. FOLTA,

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

## Direct Examination

By Mrs. Hermann:

I do not recall whether I attended the preliminary hearing in Petersburg in this case. I remember talking to the witnesses. (The next part of Mr. Folta's testimony is covered in the Assignment of Errors and is not repeated here since it was ruled inadmissible.)

After defendant making an offer of proof in the absence of the jury Mr. Folta testified as follows:

I may have talked to Zamora before the fire. I talked to him several times. I do not remember talking to him about a case involving a man named Hovey. I do not remember giving him any advice about his child.

Witness excused.

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JOHN SILVA,

recalled as a witness on behalf of the defendant, testified as follows:

## Direct Examination

By Mrs. Hermann:

I had some pictures taken of the place after the fire. They were taken on the beach side. A Japanese took the pictures. It is a picture of the place as it looked after the fire.

(Testimony of John Silva.)

Questioned by Mr. Folta about them:

They correctly show the condition after the fire. There was another picture too. I was there when he took them. (Pictures admitted in evidence as Defendant's Exhibit No. A and shown to jury.)

Cross Examination

By Mr. Folta:

There is a platform between the two houses. I have marked a cross right about the part of the walk between the two buildings that remained after the fire. It all burned up except that end of the walk. There was a hole between the two houses, 14 inches wide here, and 6 inches here, and the rest of the space between the two buildings [53] was sidewalk. Witness designated part of sidewalk remaining after the fire by marking X.

Redirect Examination

By Mrs. Hermann:

The walk went clear through to the beach side. It was fourteen inches wide in front, and a little over six inches in back.

Witness excused.

Recess.

Mrs. Hermann: The defense rests.

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Rebuttal Witnesses.

CLIFFORD FENN,

recalled in rebuttal, testified as follows:

Direct Examination

By Mr. Folta:

I have noticed the walk between the buildings. I never went back there. I believe it starts where the "X" is marked. I knew Zamora before the fire. I never had occasion to talk to him except to speak. I never noticed anything heard of hearing about him. He heard me all right the morning of the fire. I did not have to shout or anything.

Cross Examination

By Mrs. Hermann:

I never went through between the houses myself—just saw it when I was passing by. The platform extends back between the two buildings, it is more or less wedge shaped. The only conversation I recall having with Zamora was the morning I arrested him. The rest of the time maybe just speaking to him.



CHRIS CHRISTENSON,

called as a witness in behalf of the Government in rebuttal, testified as follows:

Direct Examination

By Mr. Folta:

I am a deputy marshal at Petersburg and have been such for several years. I have known Zamora, five, six, seven years. I don't know. I have talked with him many times, 500, I guess. I never noticed he was hard of hearing.

Cross Examination

By Mrs. Hermann: [54]

I have rather a carrying voice. I got a loud voice, I know.

Redirect Examination

By Mr. Folta:

I have heard him talking to others. I have never heard him having any difficulty with anyone.

Recross Examination

By Mrs. Hermann:

I have had him in jail since the 8th of April and heard him talk every day among the rest of the prisoners, to me, the guard and to any visitors coming around. I have never noticed Zamora had faulty hearing.

## WILLIAM GRANIER,

recalled in rebuttal, testified as follows:

## Direct Examination

By Mr. Folta:

(Shown Defendant's Exhibit A.) The front part of the walk between the two buildings is shown here. After the platform was built the cabinet shop was built, but it did not occupy the entire platform.

## Cross Examination

By Mrs. Hermann:

The platform ran the whole distance through. It was narrower in back. In front it is about three feet. In back it is about fourteen inches. I never went back on the platform. There was never a fence in front of platform.

Government rests.

Defense rests.

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And thereupon, both sides having rested, the following proceedings were had:

Mrs. Hermann: I would like to have the jury excused while I make a motion.

The Court: Very well.

The jury retired.

Mrs. Hermann: If the Court please, the defendant at this time through his attorney, moved that the jury be instructed to return a verdict of "Not

Guilty, as charged in the indictment," for the reason that there [55] is no evidence that would warrant a verdict of guilty. There has been no testimony given by any person to show that the defendant was on the premises prior to the fire, or that he could have been in that room. On the contrary the evidence is all to the effect that he could not have been. There has been no evidence introduced to show he used any means to introduce into the room, or that anything was introduced into the room of an incendiary nature, such as a torch, oil rags or anything that could be considered inflammable. There has been a complete failure of the prosecution to connect the defendant with this fire in any way that would warrant a verdict of guilty at the hands of the jury.

#### Argument.

The Court: I think there is ample evidence to go to the jury. The motion will be denied.

Mrs. Hermann: The Court will allow us an exception.

The Court: Call the jury.

The jury returned to the court room and took its place in the box.

And thereafter the case was argued by respective counsel, and submitted to the jury, and on December 17th, 1938 at ten o'clock A. M. the jury returned into court with a sealed verdict, the defendant and all parties being present as heretofore, and returned a verdict finding the defendant guilty as charged in the indictment.

Thereafter the following proceedings took place:

Mrs. Hermann: May it please the Court, the defense moves at this time that the verdict be set aside in the case of the United States vs. Miguel Zamora, as not supported by the evidence. Do you wish me to argue the motion at this time? Or just state it for the record? I argued it at the time I requested the directed verdict, and have nothing to add to what I said then.

The Court: Very well, the motion will be denied.

Mrs. Hermann: We ask an exception to the ruling.

The Court: Exception will be allowed.

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And thereafter on the 22nd day of December the defendant filed [56] his motion for a new trial, which motion is as follows:

[Title of Court and Cause.]

### MOTION FOR NEW TRIAL

Comes now the defendant in the above entitled cause and moves the court for an order directing a new trial in this case; this motion is based upon the following grounds:

#### I.

Insufficiency of the evidence to justify the verdict in that:

1. No corpus delicti was proved as no evidence was introduced to show the criminal origin of the fire;

2. No evidence was offered to rebut the presumption that the fire was accidental or providential, except the bare fact that there had been no fire in the stove, or either of them for approximately three hours; and

3. No evidence was offered in any way connecting the defendant with the purchase or possession of gasoline, concerning which witnesses testified;

4. No responsible adult witness testified to seeing the defendant in the neighborhood at the time of the fire.

II.

Errors in law occurring at the trial and excepted to by the defendant, in that:

1. The court denied the defendant's offer of proof that the chimney was defective and that a fire hazard existed as a result of this defectiveness that could have caused the fire;

2. The court denied the defendant the right to introduce testimony from an expert witness concerning fire hazards in general and particularly in regard to the fire hazard caused by a defective chimney; and

3. The Court denied the defendant the right to impeach Mabel Jackson, an eleven year old native girl, who was the only witness to connect the defendant with the fire, by showing that the said Mabel Jackson had made a false statement at..... in her sworn testimony at this trial.

4. The court denied the defendant's motion for a continuance until Beulah Rafol, a material witness for the defense, could be produced; and [57]

5. The court denied the offer of defendant to show that Beulah Rafaol's testimony was material through the record of her testimony taken before the grand jury by the district attorney; and

6. The Court denied the motion of the defendant for an instructed verdict of Not Guilty, because the evidence before the jury was not sufficient to sustain a verdict of guilty; and

7. The Court denied the motion of defendant's attorney to set aside the verdict of the jury because it was not supported by the evidence; and

8. Other errors at law occurring at the trial and excepted to by the defendant.

MILDRED R. HERMANN,

Attorney for Defendant.

Copy received and service accepted this 22nd day of December, 1938.

GEORGE W. FOLTA,

Attorney for Plaintiff.

[Endorsed]: Filed Dec. 22, 1938.

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And thereafter on the 7th day of January, 1939, said motion for a new trial came on regularly to be heard, the Government appearing by George W. Folta, Assistant District Attorney, and the defendant appearing by his attorney, Mildred R. Hermann, and the court being fully advised in the prem-

ises, overruled and denied the same, to which ruling the defendant excepted and such exception was allowed.

And on the 4th day of February, 1939, the court entered its judgment, sentencing the defendant to the penitentiary for twenty years.

Thereafter the following order was made:

Minute order entered on the 11th day of March, 1939, settling the time for filing and settling the Bill of Exceptions for June 30, 1939.

And thereafter on March 29, 1939, defendant through his attorney, Mildred R. Hermann, filed with the Court a motion for an order to reopen the hearing on a motion for a new trial based upon newly discovered evidence, and supported by affidavits, copies of which said motion and supporting affidavits are herewith attached and incorporated by reference and made a part of this Bill of Exceptions.

And thereafter on motion made by attorney for defendant on March 25, 1939, the Court entered a minute order continuing the [58] regular June Term of Court, of the District Court, and holding it open, for the purpose of hearing argument on said motion, and settling other matters in connection with this case.

And thereafter on June 20, 1939 said motion to reopen hearing for new trial came on regularly to be heard, and the Court, being fully advised in the premises, overruled and denied the same, to which

ruling and order defendant excepted, and which exception was allowed, and entered in the minutes of the clerk under the date thereof.

And thereafter on June 28, 1939, defendant filed with the District Court, within the time allowed therefor, his Bill of Exceptions, and

And thereafter on June 30, 1939, within the time allowed the Court duly signed and entered an order Extending the Time for settling the Bill of Exceptions, which order is as follows:

[Title of Court and Cause.]

ORDER GRANTING EXTENSION OF TIME  
FOR SETTLING BILL OF EXCEPTIONS.

Whereas on the 11th day of March, 1939 the Judge of the above entitled court issued a minute order settling June 30 as the final day for the settlement of the Bill of Exceptions in the above entitled case, and whereas the Assistant District Attorney, George W. Folta, has requested additional time in which to study said Bill of Exceptions, and counsel for the defendant, Mildred R. Hermann, has assented thereto; Now therefore it is hereby ordered that the time for settling said Bill of Exceptions, heretofore filed in the office of the Clerk of the above entitled court, under date of July 28, 1939, be extended for an additional thirty days in order to allow time for an examination of said Bill of Exceptions by said Assistant District Attorney.

Done in open court this 30th day of June, 1939.

GEORGE F. ALEXANDER,

District Judge.



And now on Monday, the 31st day of July, and within the time allowed the defendant duly filed his Bill of Exceptions.

MILDRED R. HERMANN,

Atty. for Defendant. [59]

Service copy acknowledged this 31st day of July, 1939.

G. W. FOLTA,

Asst. U. S. Atty.

[Endorsed]: Filed Jul. 31, 1939. [60]

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[Title of District Court and Cause.]

POINTS RELIED ON IN APPEAL.

Comes now the defendant in the above entitled case on appeal and presents the following as a statement of the points and portions of transcript in consideration thereof, upon which he will rely on his appeal:

I. Errors at law occurring during the trial and excepted to by defendant as follows:

Point No. 1.

The Court erred in denying defendant's offer to prove the defectiveness of the chimney at the Silva house, that it had caused a fire a few days prior to the alleged crime of arson, and that no cleaning of the chimney had been made in the interim.

Transcript, page 128, beginning on line 18, and continuing to the end of line 4, on page 130.

Point No. 2.

The Court erred in denying defendant right to introduce expert testimony concerning fire hazards and causes in general, and particularly in regard to hazards arising out of defective chimneys such as referred to in Point 1. Transcript pages 164, 166 inclusive.

Point No. 3.

The Court erred in denying defendant the right to impeach Mabel Jackson, an eleven year old Indian girl, who was the only witness to connect the defendant with the place of the fire, by showing the said Mabel Jackson had made a false statement in her testimony at the trial. Transcript page 46, lines 19-29, and Transcript page 136, lines 4 and continuing through page 137. [61]

Point No. 4.

The Court erred in denying defendant's motion for instructed verdict of not guilty at conclusion of defendant's evidence, because the evidence was not sufficient to sustain a verdict of guilty. Transcript, page 199, line 29, to line 21, page 197.

Point No. 5.

The Court erred in denying defendant's motion to set aside the verdict of the jury because it was not supported by the evidence. Transcript, page 200, line 16, and following.

## Point No. 6.

The Court erred in denying defendant's motion for a new trial, and for Reopening Hearing on Motion for New Trial, after the discovery of new evidence material to the defendant, as set up in said motions and accompanying affidavits, which are included in the record.

## Point No. 7.

The Court erred in denying motion for continuance until a material witness could be secured, as shown by motion and accompanying affidavit, which is a part of the record herein.

## Point No. 8.

The Court erred in denying the defendant the right to introduce Beulah Rafol's testimony by means of the notes taken by the District Attorney before the grand jury. Transcript, page 180, line 19, to page 182, line 25.

II. Insufficiency of the evidence to Warrant a Verdict of guilty and Verdict is Against law.

## Point No. 1.

No corpus delicti was proved, as there was no evidence showing the criminal origin of the fire.

## Point No. 2.

The Government failed to offer evidence to rebut the presumption that the fire was accidental or providential, and defendant's offers of proof in that connection were denied. [62]

## Point No. 3.

The Government failed to offer any evidence connecting defendant with purchase or possession of gasoline or other inflammable substances.

## Point No. 4.

The Government failed to show that defendant was on premises or near them or had opportunity to have started the fire.

All these facts are apparent from a study of the testimony as set up in narrative form in the bill of exceptions.

To sum up the foregoing points defendant contends that there was an absolute lack of evidence sufficient to warrant a jury to return a verdict of guilty under the law applicable to the crime of arson, and that the defendant was prejudiced by the ruling of the court duly excepted to, as set up in the Assignment of Error, and in Section 1 of the above.

HERMANN & FOSTER,

Attorneys for Defendant.

By MILDRED R. HERMANN.

Copy received and service accepted this 21 day of September, 1939.

WM. A. HOLZHEIMER,

U. S. Attorney.

[Endorsed]: Filed Sept. 21, 1939. [63]

[Title of District Court and Cause.]

Case No. 2254-B

CITATION OF APPEAL.

To the United States of America and William A. Holzheimer, United States Attorney for the First Division, Territory of Alaska, greeting:

You are hereby cited and admonished to be and to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within sixty days from and after this date, pursuant to an Appeal filed in the clerk's office of the District Court for the Territory of Alaska, Division Number One, in the above entitled cause, wherein Miguel Zamora is the appellant and the United States of America the appellee, to show cause, if any there be, why the judgment in the petition of appellant mentioned should not be corrected and speedy justice should not be done in his behalf.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States on this 13 day of September, 1939.

GEO. F. ALEXANDER,

District Judge.

Service accepted and copy received this 13 day of September, 1939.

G. W. FOLTA,

Asst. U. S. Attorney.

Entered Court Journal No. 13, page 57.

[Endorsed]: Filed Sept. 13, 1939. [64]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF  
RECORD.

To the Clerk of the District Court, Territory of  
Alaska, Division Number One.

Please prepare and transmit to the Circuit Court  
of Appeals for the Ninth Circuit, in connection with  
the appeal herein, the following:

1. Assignment of Error and Bill of Exceptions  
duly certified;

2. Original or certified copies of the following:  
Indictment, verdict, judgment and sentence, Mo-  
tion for New Trial, Motion for ReOpening Hearing  
on Motion for New Trial, Motion for Continuance,  
Notice of Appeal, Order Allowing Appeal, Order  
Extending Time for Settling Bill of Exceptions,  
Order Settling Bill of Exceptions, Citation for Ap-  
peal, Points Relied Upon in Appeal, and this Prae-  
cipe, together with copies of all affidavits in support  
of said motions.

Dated at Juneau, Alaska, this 21st day of Sep-  
tember, 1939.

HERMANN & FOSTER,  
By MILDRED R. HERMANN,  
Attorneys for Defendant.

Copy received and service accepted this 21st day  
of September, 1939.

WM. A. HOLZHEIMER,  
U. S. Attorney.

[Endorsed]: Filed Sept. 21, 1939. [65]

[Title of District Court.]

CERTIFICATE.

I, Robert E. Coughlin, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 66 pages of typewritten matter, numbered from 1 to 66, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the Appellant on file herein and made a part hereof, in cause 2254-B, wherein Miguel Zamora is the Appellant and the United States of America is Appellee, as the same appears of record and on file in my office, and that said record is by virtue of an appeal and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Twenty-six and 15/100 Dollars has been paid to me by counsel for Appellant.

In witness whereof I have hereunto set my hand and the seal of the above-entitled Court this 17th day of October, 1939.

ROBERT E. COUGHLIN,

Clerk.

By G. W. NOSTRAND,

Deputy. [66]

[Endorsed]: No. 9344. United States Circuit Court of Appeals for the Ninth Circuit. Miguel Zamora, Appellant, vs. United States of America, Appellee. Transcript of Record Upon Appeal from the District Court for the Territory of Alaska, First Division.

Filed October 30, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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In the United States Circuit Court of Appeals,  
Ninth Circuit, at San Francisco.

Case No. 9344

MIGUEL ZAMORA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

DESIGNATION OF POINTS RELIED ON,  
IN APPEAL.

Comes now the appellant in the above entitled case, and herewith adopts as his points in appeal, those set forth in the Transcript of the record, as transmitted to the above entitled court, by the clerk of the Court of the Third Judicial Division



of Alaska. Appellant further designates for printing the record in its entirety, as transmitted by said clerk.

HERMANN & FOSTER,  
By MILDRED R. HERMANN,  
Attorneys for Appellant.

Service accepted and copy received this 13th day of November, 1939.

WM. A. HOLZHEIMER,  
U. S. Attorney.

[Endorsed]: Filed Nov. 17, 1939. Paul P. O'Brien, Clerk.

